

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1442/2010,1664/2010-1702/2010,1908/2010-1912/2010 - EX[DB] WITH
E/S/1477, 1662-1700&1853-1857/2010-EX

Date 20/10/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. SIDHI VINAYAK INDUSTRIES
C-82-A, MIA 2ND PHASE, BASNI, JODHPUR
342005

M/S. SIDHI VINAYAK INDUSTRIES

Appellant

Vs
Respondent

C.C.E. JAIPUR II

STAY ORDER NO.716-760/2010-EX

I am directed to transmit herewith a certified copy of Final order No. 678-722/
2010 EX[DB] dated 24-9-10
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR II

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

SH. G.K. SARKAR, ADV., & SH S. YADAVA, ADV.,
A-5, BASEMENT, LAJPAT NAGAR-III, N. DELHI-24

3 C.D.R

~~4 J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

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12 LAWCRUX Advisors Pvt Ltd, LAW House.1-8.Sector - 10, Faridabad 121003 (Harvana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New
Delhi - 110070

14 Office Copy

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16.HON'BLE PRESIDENT.


Assistant Registrar
(Excise Appeal Branch)

17. M/S ACCURATE METALS,

C-81, MIA 2ND PHASE, BASNI, JODHPUR-342005.

18. M/S ACME INDUSTRIES,
E-85, MIA 2ND PHASE, BASNI, JODHPUR-342005.
19. M/S AGARWAL FERRO (INDIA) PVT. LTD.
10/11, RIICO, INDUSTRIAL AREA, KESARPURA, SHEOGANJ,
DISTT-SIROHI (RAJ.)
20. M/S ARIHANT INDUSTRIES
C-82, MIA 2ND PHASE, BASNI, JODHPUR-342005.
21. M/S ARIHANT METALS,
16-B, HEAVY INDUSTRIAL AREA, JODHPUR-342005.
22. M/S BHAVESH STRIPS,
E-96A, MIA 2ND PHASE, BASNI, JODHPUR-342005.
23. M/S DAULAT INDUSTRIES
17-A, HEAVY INDUSTRIAL AREA, JODHPUR-342005.
24. M/S GANGA STEELS
F-465, MIA 2ND PHASE, BASNI, JODHPUR-342005.
25. M/S GANPATI STEELS
E-327(A), MIA, 2ND PHASE, BASNI, JODHPUR-342005.
26. M/S KUSHAL INDUSTRIES
G-578, MIA 2ND PHASE, BASNI, JODHPUR.
27. M/S LAXMI METALS
G-1/600-601, MIA, 2ND PHASE, BASNI, JODHPUR-342005.
28. M/S NAVKAR STEELS
F-427, MIA 2ND PHASE, BASNI, JODHPUR-342005.
29. M/S OSWAL STEELS,
466-467, MIA 2ND PHASE, BASNI, JODHPUR-342005.
30. M/S PRAMOD & PRAMOD,
E-322, MIA 2ND PHASE, BASNI, JODHPUR-342005.
31. M/S PUNIT METALS,
BEHIND POLICE STATION, MIA 2ND PHASE, BASNI,
JODHPUR-342005.

32. M/S RELIABLE STEELS
6TH NEW NAKODA INDUSTRIAL AREA, 2ND PHASE, BASNI,
JODHPUR-342005.

33. M/S RONAK INDUSTRIES
E-16(A), MIA 2ND PHASE, BASNI, JODHPUR-342005,

34. M/S SUPER METALS
E-552(A), MIA 2ND PHASE, BASNI, JODHPUR-342005.

35. M/S SURANA METALS
7(A) II, HEAVY INDUSTRIAL AREA, JODHPUR-342005.

36. M/S TUBES & BARS
27, INDUSTRIAL AREA, OPP. DIESEL SET, JODHPUR-342005,

37. M/S VIRAT METAL INDUSTRIES,
F-109, MIA 2ND PHASE, BASNI, JODHPUR-342005,

38. M/S. B P B (INDIA)
G-625, MIA 2ND PHASE, BASNI, JODHPUR .

39. M/S. DAGA UDHYOG
A-53, MIA 2ND PHASE, BASNI, JODHPUR ,

40. M/S. J M METALS
21A, MIA 2ND PHASE, BASNI, JODHPUR.

41. M/S. LAKSHMI PIPES INDUSTRIES
E-392, MIA 2ND PHASE, BASNI, JODHPUR ,

42. M/S. NATIONAL METALS
E-73(A), MIA 2ND PHASE, BASNI, JODHPUR.

43. M/S. PRATIK METALS PVT. LIMITED
E-74, MIA 2ND PHASE, BASNI, JODHPUR (RAJ.) .

44. M/S. RAJESH METALS
G-624, MIA 2ND PHASE, BASNI, JODHPUR .

45. M/S. SHANTI STEEL INDUSTRIES
G-408/B, MIA 2ND PHASE, BASNI, JODHPUR.

46. M/S. SHIVAM METALS
6, INDUSTRIAL AREA, BEHIND NEW POWER HOUSE,
JODHPUR.

47. M/S. SHREE DAGA STEELS
G-1/93, NEW JODHPUR INDUSTRIAL AREA, JODHPUR.

48. M/S. SURBHI ALLOYS PVT. LTD.
E-378, MIA 2ND PHASE, BASNI, JODHPUR.

49. M/S ALEMBIC METALS PVT. LTD.
E-390, MIA 2ND PHASE, BASNI, JODHPUR-342005.

50. M/S KHEMANI METAL IND. PVT. LTD.
A-46(A), MIA 2ND PHASE, BASNI, JODHPUR-342005.

51. M/S MEHTA METAL INDUSTRIES
E-212-A, MIA, 2ND PHASE, BASNI, JODHPUR-342005.

52. M/S PARADISE STEEL PVT. LTD,
E-37, MIA, 2ND PHASE, BASNI, JODHPUR-342005.

53. M/S SHANTI UDYOG,
36-B, HEAVY INDUSTRIAL AREA, JODHPUR-342005.

54. M/S. BOHRA INDUSTRIES
A-46(B), MIA 2ND PHASE, BASNI, JODHPUR.

55. M/S. BRIGHT METALS
4, LIGHT INDUSTRIAL AREA, JODHPUR.

59. M/S. PARAKH INDUSTRIES
F-109, MIA 2ND PHASE, BASNI, JODHPUR.

56. M/S. KUSHAL METALS
14-B(II), HEAVY INDUSTRIAL AREA, JODHPUR.

57. M/S. NATIONAL STEEL INDUSTRIES
F-416, MIA 2ND PHASE, BASNI, JODHPUR.

60. M/S. SURAJ STEEL INDUSTRIES
E-41, MIA 2ND PHASE, BASNI, JODHPUR.

58. M/S. OSWAL METALS
15-B, INDUSTRIAL AREA, BEHIND NEW POWER HOUSE,
JODHPUR.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 24.09.2010

Sl. No.	Excise Stay No. in Excise Appeal No.	Name of the party	Respondent
1	1477/10 in E/A No. 1442/10	M/s Sidhi Vinayak Industries	CCE, Jaipur-II
2	1662/10 in E/A No. 1664/10	M/s Rajesh Metals	-do-
3	1663/10 in E/A No. 1665/10	M/s Parakh Industries	-do-
4	1664/10 in E/A No. 1666/10	M/s Pratik Metals Pvt. Ltd.	-do-
5	1665/10 in E/A No. 1667/10	M/s Daga Udyog	-do-
6	1666/10 in E/A No. 1668/10	M/s Lakshmi Pipe Industries	-do-
7	1667/10 in E/A No. 1669/10	M/s Shree Daga Steel	-do-
8	1668/10 in E/A No. 1670/10	M/s B.P.B. (India)	-do-
9	1669/10 in E/A No. 1671/10	M/s Bohra Industries	-do-
10	1670/10 in E/A No. 1672/10	M/s Bright Metals	-do-
11	1671/10 in E/A No. 1673/10	M/s Surbhi Alloys Pvt. Ltd.	-do-
12	1672/10 in E/A No. 1674/10	M/s Oswal Metals	-do-
13	1673/10 in E/A No. 1675/10	M/s Shivam Metals	-do-
14	1674/10 in E/A No. 1676/10	M/s Suraj Steel Industries	-do-
15	1675/10 in E/A No. 1677/10	M/s J.M. Metal	-do-
16	1676/10 in E/A No. 1678/10	M/s National Metals	-do-
17	1677/10 in E/A No. 1679/10	M/s Shanti Steel Industries	-do-
18	1678/10 in E/A No. 1680/10	M/s National Steel Industries	-do-
19	1679/10 in E/A No. 1681/10	M/s Kushal Metals	-do-
20	1680/10 in E/A No. 1682/10	M/s Agarwal Ferro (India) Pvt. Limited	-do-
21	1681/10 in E/A No. 1683/10	M/s Laxmi Metals	-do-
22	1682/10 in E/A No. 1684/10	M/s Punit Metals	-do-

23	1683/10 in E/A No. 1685/10	M/s Bhavesh Strips	-do-
24	1684/10 in E/A No. 1686/10	M/s Pramod & Pramod	-do-
25	1685/10 in E/A No. 1687/10	M/s Arihant Metals	-do-
26	1686/10 in E/A No. 1688/10	M/s Paradise Steel Pvt. Ltd.	-do-
27	1687/10 in E/A No. 1689/10	M/s Reliable Steels	-do-
28	1688/10 in E/A No. 1690/10	M/s Ganpati Steels	-do-
29	1689/10 in E/A No. 1691/10	M/s Mehta Metal Industries	-do-
30	1690/10 in E/A No. 1692/10	M/s Tubes & Bars	-do-
31	1691/10 in E/A No. 1693/10	M/s Ronak Industries	-do-
32	1692/10 in E/A No. 1694/10	M/s Khemani Metal Industries Pvt. Ltd.	-do-
33	1693/10 in E/A No. 1695/10	M/s Super Metals	-do-
34	1694/10 in E/A No. 1696/10	M/s Arihant Industries	-do-
35	1695/10 in E/A No. 1697/10	M/s Ganga Steels	-do-
36	1696/10 in E/A No. 1698/10	M/s Alembic Metals Pvt. Ltd.	-do-
37	1697/10 in E/A No. 1699/10	M/s Surana Metals	-do-
38	1698/10 in E/A No. 1700/10	M/s Navkar Steel	-do-
39	1699/10 in E/A No. 1701/10	M/s Daulat Industries	-do-
40	1700/10 in E/A No. 1702/10	M/s Kushal Industries	-do-
41	1853/10 in E/A No.1908/10	M/s Acme Industries	-do-
42	1854/10 in E/A No. 1909/10	M/s Oswal Steels	-do-
43	1855/10 in E/A No. 1910/10	M/s Accurate Metals	-do-
44	1856/10 in E/A No. 1911/10	M/s Virat Metal Industries	-do-
45	1857/10 in E/A No. 1912/10	M/s Shanti Udyog	-do-

Appearance: Sh. G.K. Sarkar & Sh. S. Yadava, Advocates for the Appellants.
Rep. by Sh. Amrish Kumar Jain, DR for the respondent.

***Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

~~STAY~~ Oral Order No. 716 - 760 / 2010 - EQ

Per: Shri Justice R.M.S. Khandeparkar:

Heard the learned Counsel for the appellants and the DR for the respondent. As we propose to dispose of all the appeals and hence the applications are allowed. We, therefore, allow the stay applications without insisting for deposit of the amount demanded under the impugned order and direct the Registry to place the appeals for final disposal forthwith.

2. Stay applications stands disposed of.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 24.09.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President

Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Yes
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Sl. No.	Excise Stay No. in Excise Appeal No.	Name of the party	Respondent	Arising out of Order-in-appeal passed by
1	E/A No. 1442/10	M/s Sidhi Vinayak Industries	CCE, Jaipur-II	Commissioner, Central Excise (Appeals), Jaipur-II.
2	E/A No. 1664/10	M/s Rajesh Metals	-do-	-do-
3	E/A No. 1665/10	M/s Parakh Industries	-do-	-do-
4	E/A No. 1666/10	M/s Pratik Metals Pvt. Ltd.	-do-	-do-
5	E/A No. 1667/10	M/s Daga Udyog	-do-	-do-
6	E/A No. 1668/10	M/s Lakshmi Pipe Industries	-do-	-do-
7	E/A No. 1669/10	M/s Shree Daga Steel	-do-	-do-
8	E/A No. 1670/10	M/s B.P.B. (India)	-do-	-do-
9	E/A No. 1671/10	M/s Bohra Industries	-do-	-do-
10	E/A No.	M/s Bright Metals	-do-	-do-

	1672/10				
11	E/A 1673/10	No.	M/s Surbhi Alloys Pvt. Ltd.	-do-	-do-
12	E/A 1674/10	No.	M/s Oswal Metals	-do-	-do-
13	E/A 1675/10	No.	M/s Shivam Metals	-do-	-do-
14	E/A 1676/10	No.	M/s Suraj Steel Industries	-do-	-do-
15	E/A 1677/10	No.	M/s J.M. Metal	-do-	-do-
16	E/A 1678/10	No.	M/s National Metals	-do-	-do-
17	E/A 1679/10	No.	M/s Shanti Steel Industries	-do-	-do-
18	E/A 1680/10	No.	M/s National Steel Industries	-do-	-do-
19	E/A 1681/10	No.	M/s Kushal Metals	-do-	-do-
20	E/A 1682/10	No.	M/s Agarwal Ferro (India) Pvt. Limited	-do-	-do-
21	E/A 1683/10	No.	M/s Laxmi Metals	-do-	-do-
22	E/A 1684/10	No.	M/s Punit Metals	-do-	-do-
23	E/A 1685/10	No.	M/s Bhavesh Strips	-do-	-do-
24	E/A 1686/10	No.	M/s Pramod & Pramod	-do-	-do-
25	E/A 1687/10	No.	M/s Arihant Metals	-do-	-do-
26	E/A 1688/10	No.	M/s Paradise Steel Pvt. Ltd.	-do-	-do-
27	E/A 1689/10	No.	M/s Reliable Steels	-do-	-do-
28	E/A 1690/10	No.	M/s Ganpati Steels	-do-	-do-
29	E/A 1691/10	No.	M/s Mehta Metal Industries	-do-	-do-
30	E/A 1692/10	No.	M/s Tubes & Bars	-do-	-do-
31	E/A 1693/10	No.	M/s Ronak Industries	-do-	-do-
32	E/A 1694/10	No.	M/s Khemani Metal Industries Pvt. Ltd.	-do-	-do-
33	E/A 1695/10	No.	M/s Super Metals	-do-	-do-
34	E/A 1696/10	No.	M/s Arihant Industries	-do-	-do-
35	E/A 1697/10	No.	M/s Ganga Steels	-do-	-do-
36	E/A	No.	M/s Alembic	-do-	-do-

	1698/10		Metals Pvt. Ltd.		
37	E/A No. 1699/10		M/s Surana Metals	-do-	-do-
38	E/A No. 1700/10		M/s Navkar Steel	-do-	-do-
39	E/A No. 1701/10		M/s Daulat Industries	-do-	-do-
40	E/A No. 1702/10		M/s Kushal Industries	-do-	-do-
41	E/A No. 1908/10		M/s Acme Industries	-do-	-do-
42	E/A No. 1909/10		M/s Oswal Steels	-do-	-do-
43	E/A No. 1910/10		M/s Accurate Metals	-do-	-do-
44	E/A No. 1911/10		M/s Virat Metal Industries	-do-	-do-
45	E/A No. 1912/10		M/s Shanti Udyog	-do-	-do-

Appearance: Sh. G.K. Sarkar & Sh. S. Yadava, Advocates for the Appellants.
Rep. by Sh. Amrish Kumar Jain, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL ORDER No 678-722/10-EX

Per: Justice Sh. R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and DR for the respondent. These matters were taken up for hearing in terms of order passed today in corresponding stay applications.

2. Since common issue of law and facts are involved in all these appeals, they were heard together and are being disposed of by this common order.

3. In all these appeals, the impugned orders have been passed dismissing the appeals solely on the ground that the appellants failed to show cause for delay of three days in filing the appeals.

4. The undisputed facts revealed from the records are that the original authority passed their order and communicated the same to the appellants on 06.11.2009. By the said orders, the education cess, the liability in respect of which was sought to be disputed by the appellants was ordered to be paid alongwith interest and imposition of penalty. Aggrieved by the said order, the appellants had filed the said appeals before the Commissioner (Appeals). The appeals were sent by post in the month of December which was received in the office of Commissioner (Appeals) on 08.01.2010. The prescribed period for filing the appeals is sixty days and considering the same there was delay in receipt of the appeals in the office of Commissionerate by three days. At the same time, records disclosed that the appeals were in fact posted within a period of limitation. That apart, the Commissioner (Appeals) is empowered under the statutory provision to condone the delay to the extent of thirty days beyond the prescribed period of sixty for filing the appeals.

5. The Commissioner (Appeals) however without issuing any notice to the appellants, without affording any opportunity to justify the delay, and without complying the basic principles of rules of natural justice, observed that there was no sufficient cause disclosed for three day's delay in filing the appeal and dismissed the appeals. Apparently, the impugned order discloses arbitrary exercise of jurisdiction by the Commissioner (Appeals) in dismissing the appeals. On this ground alone, the impugned orders cannot be sustained and are liable to be set aside.

6. Considering the facts that the appellants had sent the appeals within the period of limitation, though they were received in the office of Commissioner (Appeals) within a period of three days beyond the prescribed period, in our considered opinion, the said delay deserves to be condoned and is accordingly hereby condoned and the matters are remanded to the Commissioner (Appeals) with direction to hear the matters on merits, after hearing the applications for stay in accordance with provisions of law.

7. Accordingly, the appeals are allowed, impugned orders are hereby set aside. The delay in filing the appeals is condoned and appeals are allowed and the matters are i.e. the appeals and the stay applications are remanded to Commissioner (Appeals) for disposal thereof in accordance with provisions of law.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/